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No. 01-422

In The

Supreme Court of the United States

SCOTT KAYSER D/B/A QUALITY EXPRESS,

Petitioner,

v.

ROADWAY PACKAGE SYSTEM, INCORPORATED,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether the federal default standards for vacatur of arbitration awards should apply to a contract evidencing a transaction involving interstate commerce which contains an arbitration provision and a generic choice-of-law clause, where the contracting parties have not expressed a clear intent in their written agreement to apply state arbitration rules.

PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

Petitioner

Scott Kayser d/b/a Quality Express is a corporate entity, which has no parent company, and no publicly-held company owns 10% or more of its stock.

Respondent

Roadway Package System, Inc. (RPS, Inc.) changed its corporate name to FedEx Ground Package System, Inc. effective February 3, 2000. FedEx Ground is a wholly owned subsidiary of FedEx Corporation. Therefore, FedEx Corporation is the parent of FedEx Ground and it owns 100% of its stock.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at 257 F.3d 287, and appears in Appendix A. The opinion of the United States District Court for the Eastern District of Pennsylvania is unreported and appears in Appendix B.

JURISDICTION

The court of appeals entered its judgment on June 7, 2001. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 2 of the Federal Arbitration Act, codified at 9 U.S.C. § 2, provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Section 10 of the Federal Arbitration Act, codified at 9 U.S.C § 10, provides:

> (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration
>
> (1) Where the award was procured by corruption, fraud, or undue means.
>
> (2) Where there was evident partiality or corruption in the arbitrators, or either of them.
>
> (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
>
> (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
>
> (5) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

Section 7341 of the Pennsylvania Uniform Arbitration Act, codified at 42 Pa. Cons. Stat. § 7341, provides in relevant part:

> The award of an arbitrator in a nonjudicial arbitration . . . may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

COUNTERSTATEMENT OF THE CASE

Respondent incorporates by reference the statement of facts in the opinion below, appearing at App. 4a-7a.

REASONS FOR DENYING THE PETITION

Although not binding, this Court has established rules identifying the reasons that it may choose to exercise its discretion on review on a writ of certiorari. These rules instruct that "[a] petition for writ of certiorari will be granted only for compelling reasons." *See* Rule 10. As explained more fully below, Petitioner has failed to suggest a compelling reason for this Court to exercise its discretionary review in this matter.

I. THE DECISION BELOW WAS DECIDED AS A MATTER OF CONTRACT CONSTRUCTION, NOT AS A MATTER OF CHOICE-OF-LAW OR FEDERAL PREEMPTION, AND IT DOES NOT EXPAND THE SCOPE OF FEDERAL LAW.

By attempting to frame this matter as one of federal preemption and choice-of-law, Petitioner hopes to persuade the Court to grant review. However, as the Third Circuit clearly stated in its decision below, the issue it decided was not one of choice-of-law or federal preemption, but one solely of contract construction. App. 2a. The court specifically stated, "[t]he issue before us, however, is not one of choice-of-law or preemption – it is simply a matter of contract construction." App. 12a.

The Third Circuit began its analysis by determining whether the agreement between Kayser and RPS was one governed by the FAA.[1] The court answered this question in the affirmative stating, "[w]e have no trouble determining that this case is governed by the FAA. . . . The agreement to arbitrate in this case – one between citizens of different states and involving a contract for the delivery and pick-up of packages that have been or will be shipped interstate – was unquestionably within Congress' power to reach under the Commerce Clause."[2] App. 9a. Having determined that the FAA governed the agreement, the court addressed the issue of whether the parties could contractually exempt their agreement from

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[1] The Third Circuit's review of the district court's ruling on RPS's motion to vacate or modify arbitration award was *de novo*.

[2] Petitioner does not contest that the agreement falls within the scope of the FAA.

the FAA's default standards on vacatur. On this issue, the court held that contracting parties may agree to opt out of the FAA's standards for vacatur of arbitration awards.[3]

The court next addressed the issue of whether the parties had opted out of the FAA's standards in this case. App. 10a-11a. When addressing this issue, the court noted, "[w]e first consider whether RPS and Kayser manifested a clear intent that any judicial review of the arbitrator's award would be conducted pursuant to standards borrowed from Pennsylvania law." App. 11a. Upon examining the agreement between Kayser and RPS, the court concluded the parties had not expressly addressed this issue in their agreement. The court stated in this regard, "[t]hough our ultimate goal is to effectuate [the parties] intent, we have little evidence with which to work. . . . The LCOA [the parties' agreement] itself says nothing about the issue before us, and there is no extrinsic evidence that RPS and Kayser gave the matter any consideration. All we have to guide us, therefore, is an arbitration clause and a generic choice-of-law clause." App. 11a.

The court of appeals then turned its analysis to the language contained in the arbitration and choice-of-law provisions in the written agreement between Kayser and RPS. The court determined that the generic choice-of-law clause contained in the written agreement, "tells us little (if anything) about whether [the] contracting parties intended to opt out of the FAA's default standards and

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[3] The issue of whether contracting parties may choose to opt out of the FAA's standards for vacatur, when the FAA otherwise governs their agreement, is *not* presented on appeal by Petitioner. *See* Petition, n.1.

incorporate ones borrowed from state law. . . . " App. 3a. Here the choice-of-law clause provided simply that "[t]his Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania." App. 11a. The arbitration provision, set forth in an entirely different section of the contract, provided in relevant part that any dispute falling within its scope be resolved "by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association."[4] *Id.*

Based on its conclusion that Kayser and RPS did not expressly opt out of the FAA's default rules in their agreement, and its finding that the parties did not contemplate the issue at the time of contracting, the court was presented with the task of constructing the agreement on these findings. The court concluded that the agreement did not evidence a clear intent to "displace the FAA's vacatur standards and replace them with ones borrowed from Pennsylvania law." App. 12a. "Because choice-of-law clauses are designed to deal with a different issue from the one with which we are currently faced, and because few federal statutes other than the FAA permit parties to contract out of their requirements, we do not read the LCOA's choice-of-law clause as evidencing a clear intent to displace the FAA's default regime." App. 2a.

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[4] The Commercial Arbitration Rules of the American Arbitration Association (AAA) do not address the issue of whether federal or state arbitration laws apply to arbitration proceedings held in accordance with the AAA's Rules.

However, as made clear by the Third Circuit in its decision, had the court determined that there was evidence of the parties' intent to incorporate Pennsylvania's arbitration law, including its standards on vacatur, the court would have upheld the intent of the parties and would have applied Pennsylvania law to their agreement. "The case might well be different if other contractual language or other evidence suggested that the parties intended to be bound by standards borrowed from state law." App. 19a, n.5. Thus, it is evident the court decided the issue as a matter of contract construction, as it expressly states in its opinion, rather than as a matter of federal preemption or choice-of-law as is suggested by Petitioner. App. 2a.

II. THE THIRD CIRCUIT'S DECISION IS NOT A CATEGORICAL DISPLACEMENT OF STATE ARBITRATION RULES AND THE DECISION DOES NOT WORK TO EVICT STATE CONTRACT LAW.

In reaching its decision, the Third Circuit announced a default rule of contract construction that provides, "a generic choice-of-law clause, standing alone, is insufficient to support a finding that contracting parties intended to opt out of the FAA's default regime." App. 3a. Petitioner argues this default rule will "categorically displace" state arbitration rules and "evict state contract law" and further suggests the rule will lead to "widespread forum shopping". Pet. 19-25.

To the contrary, the Third Circuit has created a straightforward and easy to apply rule of contract construction that will be simple to follow by parties when drafting written agreements containing both arbitration and choice-of-law clauses. Under the rule, contracting parties may choose the law that they intend to govern their agreement. If the parties clearly provide in their written agreement that a particular body of arbitration law is to apply, the courts will honor their intent as was made clear by the court in its decision below when it provided, "[t]his rule will . . . preserve the ability of sophisticated parties to opt out [of the federal standards for vacatur of arbitration awards]." App. 3a. The court further provided, "the rule we announce will preserve the ability of parties to contract around the default federal standards." App. 18a. In this regard, the court's decision upholds and promotes the Congressional policy behind the FAA to enforce the terms of private arbitration agreements. App. 9a.

The decision below leaves contracting parties unrestrained to designate the law they choose to apply to govern their agreement. Thus, contracting parties can draft their agreement to avoid the problem the court faced here – a contract devoid of evidence of the parties intent on the issue of what arbitration law was to govern the agreement and a record where there was no extrinsic or other evidence of the parties' intent on the issue. The court discussed the relative ease with which contracting parties could draft their agreement to avoid this problem, "[a]ssuming that both parties *genuinely* wish to be governed by standards other than the FAA's. . . . It is not particularly difficult, for example, to provide that 'any

controversy shall be settled by arbitration in accordance with the terms of the Pennsylvania Uniform Arbitration Act.' " App. 19a. (emphasis in original) (citing *cf. Ford v. NYLCare Health Plans of Gulf Coast, Inc.*, 141 F.3d 243, 246 (5th Cir. 1998) (noting that the parties' contract provided that "[a]ny controversy . . . shall be settled by arbitration in accordance with the Texas General Arbitration Act").

The Third Circuit explained that it adopted the default rule in order to "(1) ensure that parties who have never thought about the issue will not be found to have elected out of the FAA's default regime; (2) be comparatively simple for arbitrators and district courts to apply; and (3) preserve the ability of sophisticated parties to opt out [of the coverage of the FAA]." App. 3a. The rule is designed to ensure that contracting parties who have never considered the issue (of what arbitration law will govern their agreement) will not unwittingly find themselves opted out of the FAA default rules, and will at the same time preserve their ability to opt out of the FAA's coverage if they so choose.[5]

While Petitioner argues that the decision below will have broad application, this is not apparent. The Third Circuit's decision can be fairly read as limited to the factual circumstances involved in the case below. The default rule only applies when the court is presented with a contract where there is no evidence of any kind of the parties' intent on the issue of what arbitration law is

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[5] "[T]here is good reason to believe that contracts often contain both generic choice-of-law and arbitration clauses in cases where it is likely that the parties gave absolutely no thought to opting out of the FAA's default standards." App. 19a.

to apply. App. 3a. ("[A] generic choice-of-law clause, *standing alone,* is insufficient to support a finding that the parties intended to opt out of the FAA. . . . ") (emphasis added).

While it is likely true that commercial agreements often contain both arbitration clauses and so-called generic choice-of-law clauses, it does not follow that the default rule will apply in every case. Pet. 1. To the contrary, a number of these agreements are not likely to implicate the FAA at all because they will not fall within the scope of its coverage. Those agreements that do fall within the scope of FAA coverage, may well provide that either the FAA or a particular state's laws will apply to govern their agreement such as where an arbitration provision expressly provides that it is to be governed in accordance with the FAA or the laws of state *x*. In that case, the courts will uphold the intent of the parties and apply the law supplied by the terms of their agreement. Even those agreements that do not expressly resolve the issue in their contract (but that fall within the scope of the FAA) will not automatically be construed in accordance with the default rule. This is true because even then, the parties may present extrinsic evidence to the court of their intent at the time of contracting on the issue of what arbitration law is to govern their agreement. If one or more of the contracting parties provides the court with evidence of the parties' intent to have a particular state's arbitration laws govern, the default rule will not apply and the court will give effect to the parties' contractual intent. Thus, it is not a foregone conclusion that the default rule for contract construction adopted by the Third Circuit will apply in every case. The default rule

will only apply in the case of an agreement otherwise covered by the FAA where there is no evidence of the intent of the parties to have state arbitration law govern their agreement.

To the extent that the default rule does apply to a written agreement containing both an arbitration clause and a generic choice-of-law clause, it is neither a displacement of state arbitration law nor an eviction of state contract law. Instead, it is a limited rule of contract construction that will give effect to the intent of the parties to have a particular body of arbitration law govern where they have clearly provided for such in their agreement, and at the same time will provide guidance to the courts and arbitrators on how to construe the agreement where the parties have not done so. *Id.*

III. THE THIRD CIRCUIT'S DECISION IS NOT INCONSISTENT WITH OR CONTRARY TO THE COURT'S DECISIONS IN *VOLT* AND *MASTROBUONO*.

Petitioner urges this Court to review this matter to harmonize the Court's decisions in *Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468 (1989) and *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995). Pet. 12-17. However, the decision made by the Third Circuit does not constitute a departure from these established precedents, nor do the similar decisions reached by other circuit courts of appeal, regarding substantially the same issue.

In *Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468 (1989) and *Mastrobuono*

v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995) this Court examined the relationship of an arbitration provision and choice-of-law clause contained in the same written agreement. In each case, the issue was presented whether a particular state arbitration law governed the agreement or whether the agreement was governed by the FAA.

Seven circuit courts of appeal have now examined this issue in light of the Court's decisions in *Volt* and *Mastrobuono*, and have construed these precedents consistent with the Third Circuit's decision below.[6] In rendering its decision, the Third Circuit not only examined the precedents of this Court but also examined each of the decisions made by the other circuit courts of appeal regarding this issue. App. 16a. An examination of the decisions of the lower courts does not demonstrate the "profound confusion" alleged to exist by Petitioner. On the contrary, the majority of circuit courts to have independently examined the issue, have reconciled this Court's precedents in the same manner and have reached the same result.[7]

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[6] The other circuit courts to examine this issue and render decisions in accord with the Third Circuit's decision below are *PaineWebber, Inc. v. Elahi*, 87 F.3d 589, 594 n.5 (1st Cir. 1996); *National Union Fire Ins. Co. v. Belco Petroleum Corp.*, 88 F.3d 129, 134 (2d Cir. 1996); *Porter Hayden Co. v. Century Indemnity Co.*, 136 F.3d 380, 383 n.6 (4th Cir. 1998); *Ferro Corp. v. Garrison Indus., Inc.*, 142 F.3d 926, 936 (6th Cir. 1998); *UHC Management Co., Inc. v. Computer Sciences Corp.*, 148 F.3d 992, 996 (8th Cir. 1998); *Wolsey, Ltd. v. Foodmaker, Inc.*, 144 F.3d 1205, 1212-13 (9th Cir. 1998).

[7] See footnote 4, *supra*.

Only two circuit courts of appeal have reached a contrary position. However, these courts, did not so much as acknowledge this Court's decision in *Mastrobuono*.[8] The Third Circuit reviewed these opinions and found the decisions made by these courts to be non-persuasive and distinguishable stating, "[o]ther decisions though decided after *Mastrobuono*, never so much as cite the decision and tend to focus on preemption rather than contract construction." App. 16a, n.4. Since these courts did not address the Court's decision in *Mastrobuono*, and since the majority of circuit courts to examine this issue have distinguished *Volt* from *Mastrobuono* in the same manner, there is no direct split of authority in the courts of appeal on this issue.

In its argument, Petitioner offers that there are two varying contract constructions or interpretations possible upon examination of a commercial agreement containing both an arbitration clause and a general choice-of-law clause. According to Petitioner, "the choice-of-law provision can be read to incorporate both the substantive state-law principles controlling the parties' dispute and the state rules governing the arbitration process, or such a provision can be read to incorporate only substantive state law, leaving the FAA's default rule in place to govern the arbitration process." Pet. 13.

Petitioner fails to address a third alternative construction, that the choice-of-law clause speaks to the issue of whether the laws of state *x* or state *y* supply the

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[8] See *ASW Allstate Painting & Construction Co. v. Lexington Insurance Co.*, 188 F.3d 307 (5th Cir. 1999) and *Ekstrom v. Value Health, Inc.*, 68 F.3d 1391 (D.C. Cir. 1995).

relevant rule of decision regarding matters involving state law. As the Third Circuit stated in its opinion, "[w]hen required to determine the legal standards governing a particular controversy, courts typically confront two choice-of-law questions. The first is the horizontal question: whether the laws of the State X or State Y supply the relevant rule of decision." App. 12a. *See also Mastrobuono*, 514 U.S. at 59 (choice-of-law clause "may reasonably be read as merely a substitute for the conflict of law analysis that otherwise would determine what laws to apply to disputes out of the contractual relationship."). The issue the court addressed here was not the horizontal question, but rather the vertical question of "whether the rule of decision is supplied by the laws of State X or by federal law." App. 12a. The court noted that choice-of-law clauses like the one contained in the agreement between Kayser and RPS are designed to address the horizontal question and not to address the vertical one. *Id.* However, the Third Circuit did not rest its decision on the issue of choice-of-law or, for that matter, federal preemption. Rather, the court decided the issue as a matter of contract construction – pure and simple. App. 12a.

Petitioner argues that the Third Circuit, "like [other circuits] held that it *could not*, consistent with the FAA policy, interpret a general choice-of-law clause in an agreement governed by the FAA to incorporate state arbitration law." Pet. 12. (emphasis added). This is not a correct statement of the Third Circuit's decision, or of the other circuit courts to have similarly resolved this issue. The Third Circuit did not hold that it "could not" interpret the agreement to incorporate state arbitration law. In

fact, the court held the exact opposite – that it could interpret the agreement in this manner if the parties had clearly expressed their intent that state arbitration law was to apply. The court stated on this point, "we hold that the parties may agree that judicial review of an arbitrator's decision will be conducted according to standards borrowed from state law." App. 10a. The court further explained, "[t]his case is *not* governed by state law – it is governed by federal law. The only reason we must decide whether to apply federal or state standards in this case is because the FAA permits parties to 'specify by contract the rules under which . . . arbitration will be conducted.' " App. 13a. (emphasis in original) (citing *Volt*, 489 U.S. at 479). In this case, the Third Circuit found as a matter of both fact and law, that the parties had not clearly expressed an intent that the state arbitration laws of Pennsylvania govern their agreement to arbitrate. Therefore, the FAA governed the agreement because the agreement "unequivocally" fell within its scope. App. 9a.

In reaching its decision, the Third Circuit analyzed this Court's precedent, including *Volt* and *Mastrobuono*. The court "found support" for its decision in *Mastrobuono*, while reconciling its decision with this Court's decision in *Volt*. App. 13a-15a.

In *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995), a dispute arose between parties to a contract (a securities broker and two of its customers) which contained an agreement to arbitrate the dispute and in the same paragraph provided that the entire agreement be "governed by the laws of the state of New York." The laws of the state of New York included a rule that barred

arbitrators from awarding punitive damages, but there was no such prohibition under the FAA. Thus, the issue before this Court was whether the parties had intended to incorporate the New York rule that barred the award of punitive damages by arbitrators into their agreement. *Mastrobuono,* 514 U.S. at 58. The Court held that the parties had not clearly intended to opt out of the federal default rule that arbitrators are permitted to render punitive damages awards and replace it with the New York rule that prohibited the same. *Id.* at 60. The Court noted that the choice-of-law clause in the agreement "[a]t most, . . . introduces an ambiguity into an arbitration agreement that would otherwise allow punitive damages awards." *Id.* at 62. Based on the Court's analysis of the agreement in *Mastrobuono,* the Third Circuit found support for its conclusion that the agreement in this case did not evidence a clear intent of the parties to displace the FAA in favor of judicial review of the arbitration award according to Pennsylvania law. App. 14a.

The Third Circuit also considered the Court's ruling in *Volt Info. Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ.,* 489 U.S. 468 (1989), and determined that its decision was not in anyway undermined by the precedent established by this Court in *Volt.* App. 14a. In *Volt,* a California court of final decision interpreted a contract involving an agreement to arbitrate and a choice-of-law clause providing that the law of the "place of the Project" was to govern. In this case, the California court found that the law of the place of the project was California. The California court further interpreted the contract to evidence the intent of the parties to include a provision of the California Arbitration Act that would have the

effect of staying the arbitration proceedings pending related litigation. On review, this Court gave deference to the California court's interpretation of the contract according to its own state laws and did not interpret the contract *de novo* or otherwise examine the California court's interpretation of the contract. Instead, the Court accepted the interpretation of the contract as supplied by the California court and limited its review to the issue of whether the application of the California provision would undermine the goals and policies of the FAA. *Volt*, 489 U.S. at 477-78. Thus, the Third Circuit did not view *Volt* as "offering guidance as to how generic choice-of-law clauses should be interpreted" since this Court did not interpret the contract in *Volt* as it did in *Mastrobuono*. App. 15a. Indeed, in *Mastrobuono*, this Court confirmed that it had not construed the contract *de novo* in *Volt* stating in reply to Justice Thomas' dissent (which relied heavily on *Volt*) that the Court had "deferred to the California court's construction of its own State's law." *Mastrobuono*, 514 U.S. at 60, n.4. "*Volt* therefore contains nothing that undercuts our conclusion that RPS and Kayser expressed no clear intent to incorporate Pennsylvania standards of judicial review into their agreement." App. 16a.

Thus, the decision below is in accord with both *Volt* and *Mastrobuono* and in accord with the Court's general admonition that the FAA standards control "in the absence of contractual intent to the contrary." App. 17a. (quoting *Mastrobuono*, 514 U.S. at 59).

IV. THE EFFECT OF THE COURT'S REVIEW OF THE QUESTION PRESENTED IS UNLIKELY TO AFFECT THE OUTCOME OF THIS CASE.

A decision by this Court that the court below was not "authorized" to implement the default rule that it announced in its opinion, is not likely to be outcome determinative in this case. Such a determination by the Court would not disturb the lower court's finding that the contract between the parties did *not* evidence a clear intent to opt out of the coverage of the FAA, including its standards on vacatur, or that application of the FAA be displaced in favor of state law on issues involving arbitration. The court provided, "[w]e decline to construe the choice-of-law clause in this case as evidencing a clear intent to incorporate Pennsylvania's standards for judicial review into the LCOA." App. 13a.

Even assuming this Court determines that the Third Circuit was not authorized to create the default rule, and assuming this Court also determines that the arbitration laws of Pennsylvania, including its standards on vacatur, govern the agreement between Kayser and RPS, it is not clear that this decision will alter the outcome in this case. While the majority below notes that "the choice of standards issue *could* well be dispositive in this case," Judge Ambro in his concurring opinion disagrees. App. 8a, n.2. (emphasis added). Judge Ambro unequivocally concluded that the outcome would be the same under either the federal or state standards stating, "both the FAA and common law arbitration under the PUAA [Pennsylvania Uniform Arbitration Act] permit vacating or modifying arbitral awards in circumstances where the arbitrator exceeds his or her authority." App. 35a. Judge Ambro

further noted, "I do not believe that judicial power under Pennsylvania common law arbitration to vacate awards is 'so much narrower than the FAA's' vacatur standards. . . . In any event, any differences that may exist do not determine the outcome of this case, and thus the PUAA does not undermine the goals and policies of the FAA in this instance."[9] Thus, in the end, it is not clear that resolution of the issue as presented by Petitioner will have any impact on the actual outcome in this case.

* * *

Although this Court's authority to review matters on a writ of certiorari is not limited to those circumstances enumerated in Rule 10, this Court has traditionally not reviewed matters other than for a compelling purpose. There can be no compelling purpose for review of a lower court's construction of the terms of a written agreement where that court's ruling is not inconsistent with any decision of this Court or contrary to any general precept of federal law.

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[9] App. 36a. *See also* App. 40a ("In any event, when all analysis is done, the result is the same whether under Pennsylvania law or the FAA – the arbitrator's award is vacated.")

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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